

Federal Acquisition Regulation

52.226-5

52.226-2 Historically Black College or University and Minority Institution Representation.

As prescribed in 26.304, insert the following provision:

HISTORICALLY BLACK COLLEGE OR UNIVERSITY
AND MINORITY INSTITUTION REPRESENTA-
TION (OCT 2008)

(a) *Definitions.* As used in this provision—

Historically black college or university means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

Minority institution means an institution of higher education meeting the requirements of Section 365(3) of the Higher Education Act of 1965 (20 U.S.C. 1067k), including a Hispanic-serving institution of higher education, as defined in Section 502(a) of the Act (20 U.S.C. 1101a).

(b) *Representation.* The offeror represents that it—

[] is [] is not a historically black college or university;

[] is [] is not a minority institution.

(End of provision)

[48 FR 42478, Sept. 19, 1983, as amended at 73 FR 53993, Sept. 17, 2008]

52.226-3 Disaster or Emergency Area Representation.

As prescribed in 26.206(a), insert the following provision:

DISASTER OR EMERGENCY AREA
REPRESENTATION (NOV 2007)

(a) *Set-aside area.* The area covered in this contract is:

[Contracting Officer to fill in with definite geographic boundaries.]

(b) *Representations.* The offeror represents that it _____ does not reside or primarily do business in the set-aside area.

(c) An offeror is considered to be residing or primarily doing business in the set-aside area if, during the last twelve months—

(1) The offeror had its main operating office in the area; and

(2) That office generated at least half of the offeror's gross revenues and employed at least half of the offeror's permanent employees.

(d) If the offeror does not meet the criteria in paragraph (c) of this provision, factors to be considered in determining whether an offeror resides or primarily does business in the set-aside area include—

(1) Physical location(s) of the offeror's permanent office(s) and date any office in the set-aside area(s) was established;

(2) Current state licenses;

(3) Record of past work in the set-aside area(s) (*e.g.*, how much and for how long);

(4) Contractual history the offeror has had with subcontractors and/or suppliers in the set-aside area;

(5) Percentage of the offeror's gross revenues attributable to work performed in the set-aside area;

(6) Number of permanent employees the offeror employs in the set-aside area;

(7) Membership in local and state organizations in the set-aside area; and

(8) Other evidence that establishes the offeror resides or primarily does business in the set-aside area. For example, sole proprietorships may submit utility bills and bank statements.

(e) If the offeror represents it resides or primarily does business in the set-aside area, the offeror shall furnish documentation to support its representation if requested by the Contracting Officer. The solicitation may require the offeror to submit with its offer documentation to support the representation.

(End of provision)

[72 FR 63088, Nov. 7, 2007, as amended at 74 FR 52849, Oct. 14, 2009]

52.226-4 Notice of Disaster or Emergency Area Set-Aside.

As prescribed in 26.206(b), insert the following clause:

NOTICE OF DISASTER OR EMERGENCY AREA
SET-ASIDE (NOV 2007)

(a) *Set-aside area.* Offers are solicited only from businesses residing or primarily doing business in _____ [Contracting Officer to fill in with definite geographic boundaries.] Offers received from other businesses shall not be considered.

(b) This set-aside is in addition to any small business set-aside contained in this contract.

(End of clause)

[72 FR 63088, Nov. 7, 2007, as amended at 74 FR 52849, Oct. 14, 2009]

52.226-5 Restrictions on Subcontracting Outside Disaster or Emergency Area.

As prescribed in 26.206(c), insert the following clause:

52.226-6

RESTRICTIONS ON SUBCONTRACTING OUTSIDE DISASTER OR EMERGENCY AREA (NOV 2007)

(a) *Definitions.* The definitions of the following terms used in this clause are found in the Small Business Administration regulations at 13 CFR 125.6(e): cost of the contract, cost of contract performance incurred for personnel, cost of manufacturing, cost of materials, personnel, and subcontracting.

(b) The Contractor agrees that in performance of the contract in the case of a contract for—

(1) *Services (except construction).* At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the Contractor or employees of other businesses residing or primarily doing business in the clause at FAR 52.226-4, Notice of Disaster or Emergency Area Set-Aside;

(2) *Supplies (other than procurement from a nonmanufacturer of such supplies).* The Contractor or employees of other businesses residing or primarily doing business in the set-aside area shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials;

(3) *General construction.* The Contractor will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees or employees of other businesses residing or primarily doing business in the set-aside area; or

(4) *Construction by special trade Contractors.* The Contractor will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees or employees of other businesses residing or primarily doing business in the set-aside area.

(End of clause)

[72 FR 63088, Nov. 7, 2007, as amended at 74 FR 52849, Oct. 14, 2009]

52.226-6 Promoting excess food donation to nonprofit organizations.

As prescribed in 26.404, insert the following clause:

PROMOTING EXCESS FOOD DONATION TO NONPROFIT ORGANIZATIONS (MAR 2009)

(a) *Definitions.* As used in this clause—

Apparently wholesome food means food that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

Excess food means food that—

(1) Is not required to meet the needs of the executive agencies; and

(2) Would otherwise be discarded.

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Food-insecure means inconsistent access to sufficient, safe, and nutritious food.

Nonprofit organization means any organization that is—

(1) Described in section 501(c) of the Internal Revenue Code of 1986; and

(2) Exempt from tax under section 501(a) of that Code.

(b) In accordance with the Federal Food Donation Act of 2008 (Pub. L. 110-247), the Contractor is encouraged, to the maximum extent practicable and safe, to donate excess, apparently wholesome food to nonprofit organizations that provide assistance to food-insecure people in the United States.

(c) *Costs.* (1) The Contractor, including any subcontractors, shall assume the responsibility for all the costs and the logistical support to collect, transport, maintain the safety of, or distribute the excess, apparently wholesome food to the nonprofit organization(s) that provides assistance to food-insecure people.

(2) The Contractor will not be reimbursed for any costs incurred or associated with the donation of excess foods. Any costs incurred for excess food donations are unallowable.

(d) *Liability.* The Government and the Contractor, including any subcontractors, shall be exempt from civil and criminal liability to the extent provided under the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791). Nothing in this clause shall be construed to supersede State or local health regulations (subsection (f) of 42 U.S.C. 1791).

(e) *Flowdown.* The Contractor shall insert this clause in all contracts, task orders, delivery orders, purchase orders, and other similar instruments greater than \$25,000 with its subcontractors or suppliers, at any tier, who will perform, under this contract, the provision, service, or sale of food in the United States.

(End of clause)

[74 FR 11832, Mar. 19, 2009]

52.227-1 Authorization and Consent.

As prescribed in 27.201-2(a)(1), insert the following clause:

AUTHORIZATION AND CONSENT (DEC 2007)

(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent—

(1) Embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract; or

(2) Used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions